IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1547 OF 2000

Shri Hastimal K. Bhandari. .. Petitioner
v/s.
Mah. Housing and Area Development Authority & anr. .. .. Respondents

Mr.Sharad Bhosale for petitioner.

Mr.R.M. Sawant, GP for res.Nos.1 to 5.

Mr.J. Reis with Mr.Y.M. Chaudhary for res.No.7.

CORAM : H.L. GOKHALE &
S.C.DHARMADHKARI, JJ.

DATED : 15TH MARCH 2005

ORAL JUDGMENT : (Per H.L. Gokhale, J.)

1. Heard the learned Counsel for the parties.

2. This petition is filed by a shop owner who is allotted a Gala in a row of ten Galas in a locality known as Subhash Nagar in Chembur area of the city of Mumbai. The property belongs to respondent No.1-MHADA. The petitioner was allotted that Gala for the cost of Rs.2,71,779/-. While allotting that Gala, an adjoining small parcel of land, which is called as Tit Bit land admeasuring 93.51 sq. mtrs., was also allotted to

him on payment of Rs.25,247/-, for which a receipt is executed on 4th August 1995. The case of the petitioner is that this receipt gives him some kind of rights and on the basis thereof, he continued to use that parcel of land and is now contending that the said parcel of land cannot be resumed by the MHADA. His further case is that by virtue of that receipt he has a right to be on that parcel of land for all times to come and prayer (a) of the petition is to direct the respondents to execute the lease deed for this parcel of land. Now, it is seen from the record that the petitioner was permitted to keep in his occupation this parcel of land which was adjoining to his Gala but it was made clear to him that he will have to become a member of the Society of all the allottees of the ten Galas. It is also seen from the record that the land was subsequently to be allotted to the Society. The petitioner did give an undertaking to that effect that he will become a member of the Society and the indemnity bond was executed by him to that effect on 29th December 1997. The Society has been formed subsequently but the petitioner has not joined the Society.

3. As far as the Housing Board is concerned, a reply has been filed by one Shri J.G. Jadhav, Assistant Estate Manager, and it is stated therein that the petitioner was expected to become a member of the Society. He was allotted the land only for the time being. It did not create any further rights in his favour. It is stated in this affidavit that since some rights are sought to be claimed on the basis of this amount, which was recovered, the respondents are ready to refund that amount.

4. As can be seen from the aforesaid narration, at the highest, the only document in favour of the petitioner is a receipt of this amount of Rs.25,247/-. There is no document of any sort creating any rights other than this receipt in favour of the petitioner. Therefore, some kind of a specific performance is sought to be obtained by virtue of a writ petition and a direction that the respondents ought to execute the lease deed. The respondents have not agreed to enter into such a lease deed nor is there any such document creating any rights in favour of the petitioner as can be seen from the record.

5. This being the position, no such writ can be issued by this Court. The petition is, therefore, dismissed. The interim order, therefore, stands vacated. Rule is discharged. The respondents will refund the amounts collected from the petitioner as stated in their affidavit. It will be refunded within four weeks.

6. Mr.Bhosale requests for continuation of the stay. Request is rejected.

(H.L. GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)